

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Timothy M. Francis and
Tammy A. Francis

v.

Civil No. 06-cv-480-PB

Lindon L. Pulley

REPORT AND RECOMMENDATION

Defendant has moved to vacate preliminary orders for attachments and injunctive relief. Document no. 23. This motion was referred to me.

Discussion

This suit was instituted in late December. Pursuant to LR 73.1(b)(2)(B) it was randomly assigned to me. The only party who had then appeared consented to my jurisdiction and requested a temporary restraining order and some attachments. I granted them and ordered a hearing on the requested preliminary injunction and ordered that (pursuant to New Hampshire law) defendant be informed of his right to a hearing to object to the attachments. Defendant was served with the notice of the preliminary injunction prior to the hearing.

However, it does not appear that plaintiff complied with

N.H. Rev. Stat. Ann. §§ 511-A:8 and 511-A:10, and the implementing rules of the Superior Court which require notice of a right to a hearing on the attachments within 14 days of service of the petition and order. Further and importantly, defendant was not served with the notice of assignment of the case to me and of his right to object to that assignment until January 24, 2007. Well within the time to object to the assignment, defense counsel filed an objection to assignment to me and the case was reassigned to Judge Barbadoro.

My orders of January 5th and 10th, therefore, can be deemed a Report and Recommendation only.

I recommend that the defendant's motion be granted as follows:

1. That a hearing on the attachments be granted either before me or Judge Barbadoro; and
2. That my orders on the preliminary injunction be deemed a Report and Recommendation or, alternatively, that a de novo hearing be granted.

Any objections to this report and recommendation must be filed within ten (10) days of receipt of this notice. Failure to file objections within the specified time waives the right to

appeal the district court's order. See Unauthorized Practice of Law Comm. v. Gordon, 979 F.2d 11, 13-14 (1st Cir. 1992); United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986).


James R. Muirhead
United States Magistrate Judge

Date: June 21, 2007

cc: Michael G. Furlong, Esq.
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Kevin M. O'Shea, Esq.